

OPERATING COVENANT AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH
AND PINNACLE PETROLEUM, INC.

THIS OPERATING COVENANT AGREEMENT ("Agreement") dated as of APRIL 21, 2014 ("Effective Date") is entered into by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California ("City"), and PINNACLE PETROLEUM, INC., a California corporation ("Business Owner"). City and Business Owner enter into this Agreement with reference to the following recited facts (together the "Recitals"):

RECITALS

A. Business Owner is in the business of selling refined petroleum products. Business Owner currently owns, and has as its current point of sale for purposes of the Uniform Local Sales and Use Tax Law, property located at 7911 Professional Circle, Huntington Beach, California 92648 ("Site"). During the Operating Period hereunder (including any extended Operating Period), Business Owner may buy alternate property within the City of Huntington Beach to be its point of sale for purposes of the Uniform Local Sales and Use Tax Law for Business Owner's business of selling refined petroleum products. In such event, the "Site" hereunder shall mean and refer to such alternate property upon the satisfaction of both of the following conditions precedent: (1) commencement of fee title ownership of such alternate property within the City of Huntington Beach by Business Owner; and (2) commencement of the designation of the property as the point of sale for purposes of the Uniform Local Sales and Use Tax Law for Business Owner's business of selling refined petroleum products.

B. City and Business Owner are parties to that certain Sales Tax Agreement between the City of Huntington Beach and Pinnacle Petroleum, Inc. dated as of July 16, 2007 ("Existing Agreement") whereby Business Owner has agreed to use the Site as its primary business location during the operating period described in the Existing Agreement. City recognizes that retention of Business Owner in Huntington Beach will continue to contribute to the economic vitality of the City, continue to provide additional jobs in the City, continue to expand the City's tax base and otherwise improve economic and physical conditions in the City.

C. In order to induce the Business Owner to retain its business in Huntington Beach, the City is willing to provide financial assistance to the Business Owner as described in this Agreement subject to the terms and conditions of this Agreement.

D. By its approval of this Agreement, the City Council of the City of Huntington Beach finds and determines that this Agreement serves as a valid public purpose through continuing to expand economic opportunities for businesses in the City, continuing to expand the City's employment base, and continuing to generate hereinafter defined Sales Tax that City can utilize to fund general governmental services such as police, fire, street maintenance, and parks and recreation programs. City and Business Owner have agreed that the respective considerations are a fair exchange.

NOW, THEREFORE, based upon the foregoing Recitals and in consideration of the mutual covenants and conditions hereinafter set forth, Business Owner and City agree as follows:

1. DEFINITIONS

The capitalized terms and words used in this Agreement shall have the following meanings unless expressly provided to the contrary.

1.1 “Base Amount” means the amount of Twenty-Five Thousand Dollars (\$25,000) in Sales Tax Increment received by the City for any quarter.

1.2 “Fiscal Year” means the City’s fiscal year of October 1 through September 30.

1.3 “Laws” means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or other governmental agency.

1.4 “Liquidated Damages” means an amount equal to twenty five thousand dollars (\$25,000) per quarter after the date of the Business Owner Default relating to Section 3.1, 3.2 and/or 3.3 hereunder through the then remainder of the Operating Period (including any extended Operating Period) (notwithstanding any termination of this Agreement as may be permitted under this Agreement).

1.5 “Operating Period” means the period beginning with the Effective Date and expiring ten (10) years later. Upon mutual written agreement of the Parties at least 180 days prior to the end of the then current Operating Period (or such later date as may be mutually agreeable to the Parties), this Agreement may be extended for up to two additional five (5) year operating periods upon the same terms and conditions herein for a cumulative total of a twenty (20) year Operating Period. Upon any such extension, “Operating Period” as used herein shall mean and include such extended operating period.

1.6 “Party” means any party to this Agreement. The “Parties” shall be both parties to this Agreement.

1.7 “Penalty Assessments” means penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payment of Sales Tax and which are levied, assessed, or otherwise collected from the business on the Site owning or obligated to pay Sales Tax.

1.8 “Person” means any person or entity, whether an individual, trustee, corporation, partnership, trust, unincorporated organization, governmental agency or otherwise.

1.9 “Sales Tax Increment” means that portion of taxes derived and received from the California State Board of Equalization pursuant to the application of the Uniform Local Sales and Use Tax Law by the City of Huntington Beach attributable to Business Owner’s business conducted on the Site. Sales Tax Increment shall not include (a) Penalty Assessments; (b) any Sales Taxes levied by, collected for or allocated to the State of California, the County of Orange,

a district or any other entity, notwithstanding that such funds received by City are derived or measured by such other entity based upon Sales Taxes; (c) any administrative fee charged by the California State Board of Equalization; or (d) any Sales Tax attributable to any transaction not consummated within the Operating Period (including any extended Operating Period). The Sales Tax Increment shall not exceed one percent (1%) upon taxable sales and uses on the Site.

1.10 “Sales Tax” means the tax derived from the Business Owner’s business conducted on the Site and a portion of which is allocated to and received by the City of Huntington Beach pursuant to the Uniform Local Sales and Use Tax Law.

1.11 “Uniform Local Sales and Use Tax Law” means and refers to: (a) California Revenue and Taxation Code Section 7200 *et seq.*, as may be amended from time to time, and any successor law thereto; and (b) regulations of the California State Board of Equalization and other binding rulings and interpretations relating to subsection (a) of this Section.

2. THE PARTIES

2.1 Business Owner. Business Owner is Pinnacle Petroleum, Inc., a California corporation. Wherever the term “Business Owner” is used in this Agreement, the term shall be deemed to refer to Pinnacle Petroleum, Inc.

Business Owner may not assign the rights and/or obligations of this Agreement to any other Person without the prior written consent of the City, which consent shall not be unreasonably withheld. Prior to any assignment by Business Owner, Business Owner shall present such information to the City as may reasonably be requested by the City Manager or designee in connection with such assignment. Upon receipt of the requested information, City shall have ten (10) days to respond and approve or disapprove the proposed assignment. In the event market conditions materially change and this Agreement places Business Owner in a non-competitive position, the City agrees to meet and confer to discuss mutually acceptable modifications to this Agreement. By executing this Agreement, Business Owner warrants and represents to City that it has the full power and authority to enter into this Agreement and that all authorizations and approvals required to make this Agreement binding upon Business Owner have been duly obtained.

2.2 The City. The City is a municipal corporation, duly organized and existing pursuant to its Charter.

3. OBLIGATIONS OF BUSINESS OWNER

3.1 Operating Covenant. Business Owner covenants and agrees that, during the Operating Period (including any extended Operating Period), Business Owner shall retain and operate on the Site Business Owner’s business of selling refined petroleum products and use the Site as Business Owner’s primary business location for selling such refined petroleum products, consistent with all applicable provisions of any Laws. Business Owner shall operate its business in a commercially reasonable and prudent manner, with the objective of generating the greatest feasible amount of Sales Tax Increment. Business Owner’s obligations pursuant to the

immediately preceding sentence include, without limitation, the obligation to obtain or cause to be obtained all federal, state and local licenses and permits required for the operation of its business.

3.2 Covenant to Designate City as Point of Sale. Business Owner covenants and agrees that, during the Operating Period (including any extended Operating Period), Business Owner shall, consistent with the requirements of law, designate the Site as the point of sale in all sales of its refined petroleum products and identify the City as such in all reports to the California State Board of Equalization in accordance with the Uniform Local Sales and Use Tax Law. Business Owner shall be solely responsible for ensuring that all taxable sales transactions for business activities are consummated at the Site, consistent with all applicable statutory and California State Board of Equalization regulatory requirements applicable to the business activities and the designation of the City as the “point of sale” for all taxable sales occurring as a result of the business activities on or off the Site.

In the event market conditions materially change and this Agreement places Business Owner in a non-competitive position, the City agrees to meet and confer to discuss mutually acceptable modifications to this Agreement.

3.3 Covenant Against Solicitation and Acceptance of Economic Incentives During the Term of the Operating Period. Business Owner covenants and agrees that, during the Operating Period (including any extended Operating Period), Business Owner shall not directly or indirectly solicit or accept any “Financial Assistance” from any other public or private Person, if such Financial Assistance is given for the purpose of causing or would result in Business Owner’s breach of any of the covenants or terms and conditions of this Agreement. For purposes of this Section, the term “Financial Assistance” means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief, rebates, and/or exemptions or credits.

3.4 Indemnification. From the Effective Date of this Agreement through the termination date of this Agreement, Business Owner shall indemnify, defend, and hold harmless City and its officers, employees and agents, from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses) (collectively “Claims”) imposed upon or incurred by or asserted against City arising out of any act or omission of Business Owner and/or its business(es); provided, however, that the aforesaid obligations of Business Owner shall not apply to the extent any Claim results from the active negligence or intentional misconduct of City or any of City’s officers, employees, agents, or contractors. In the event that any action, suit or proceeding is brought against City by reason of any such occurrence, Business Owner, upon City’s request, will, at Business Owner’s expense, defend such action, suit or proceeding at Business Owner’s sole cost.

3.5 Insurance.

3.5.1 Workers' Compensation Insurance.

Pursuant to California Labor Code section 1861, Business Owner acknowledges awareness of section 3700 *et seq.* of said Code, which requires every employer to be insured against liability for workers' compensation. Business Owner covenants that it will comply with such provisions from the Effective Date of this Agreement through the termination date of this Agreement.

Business Owner shall maintain workers' compensation insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000) bodily injury by accident, each occurrence, One Hundred Thousand Dollars (\$100,000) bodily injury by disease, each employee, Two Hundred Fifty Thousand Dollars (\$250,000) bodily injury by disease, policy limit.

Business Owner shall require all subcontractors to provide such workers' compensation insurance for all of the subcontractors' employees. Business Owner shall furnish to City a certificate of waiver of subrogation under the terms of the workers' compensation insurance and Business Owner shall similarly require all subcontractors to waive subrogation.

3.5.2 Insurance.

In addition to the workers' compensation insurance and Business Owner's covenant to indemnify City, Business Owner shall obtain and furnish to City, a policy of general public liability insurance, including motor vehicle coverage, covering the Site and Business Owner's business operations thereon. Said policy shall indemnify Business Owner, its officers, agents and employees, while acting within the scope of their duties, against any and all claims of arising out of or in connection with the Site or Business Owner's business operations thereon, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of \$1,000,000 per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than \$1,000,000. Said policy shall name City, its officers, and employees as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to the Site or Business Owner's business operations thereon shall be deemed excess coverage and that Business Owner's insurance shall be primary.

Under no circumstances shall said above-mentioned insurance contain a self-insured retention, or any other similar form of limitation on the required coverage.

3.5.3 Certificates of Insurance; Additional Insured Endorsements.

Prior to commencement of the Operating Period hereunder, Business Owner shall furnish to City certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Agreement; said certificates shall:

- a. provide the name and policy number of each carrier and policy;
- b. shall state that the policy is currently in force;
- c. shall promise to provide that such policies will not be canceled or modified without thirty (30) days' prior written notice of City; and
- d. shall state as follows: ***"The above-detailed coverage is not subject to any self-insured retention, or any other form of similar-type limitation."***

Business Owner shall maintain the foregoing insurance coverages in force from the Effective Date of this Agreement through the termination date of this Agreement.

The requirement for carrying the foregoing insurance coverages shall not derogate from the provisions for indemnification of City by Business Owner under this Agreement. City or its representative shall at all times have the right to demand the original or a copy of all said policies of insurance. Business Owners shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

A separate copy of the additional insured endorsement to each of Business Owner's insurance policies, naming the City, its officers and employees as Additional Insureds shall be provided to the City Attorney for approval prior to any payment hereunder.

3.5.4 Non-Assignability. Business Owner shall not sell, assign, transfer, convey or encumber this Agreement, or any part hereof, or any right or duty created herein, without the prior written consent of City and the surety, which consent shall not be unreasonably withheld by the City. Prior to any assignment by Business Owner, Business Owner shall present such information to the City as may reasonably be requested by the City Manager or designee in connection with such assignment. Upon receipt of the requested information, City shall have ten (10) days to respond and approve or disapprove the proposed assignment. In the event market conditions materially change and this Agreement places Business Owner in a non-competitive position, the City agrees to meet and confer to discuss mutually acceptable modifications to this Agreement.

3.6 Anti-discrimination. Business Owner shall not discriminate against any employee or applicant for employment because of age, sex, marital status, race, handicap, color, religion, race, ancestry, or national origin.

3.7 Business Owner's Representations and Warranties. Business Owner makes the following representations and warranties as of the date of this Agreement and agrees that such representations and warranties shall survive and continue thereafter but shall not be remade after the date of this Agreement.

3.7.1 No Litigation. There is no litigation, action, suit, or other proceeding pending or threatened against the Business Owner or the Site that may adversely affect the validity or enforceability of this Agreement or sale of the refined petroleum product at the Site. To the best of Business Owner's knowledge, Business Owner is not in violation of any statute,

law, regulation or ordinance, or of any order of any court or governmental entity the effect of which would prohibit the Business Owner from performing its obligations hereunder.

3.7.2 Authority. Business Owner has complied with all governmental requirements concerning its organization, existence and transactions of refined petroleum products. Business Owner has the right and power to own and operate its business as contemplated in this Agreement.

3.7.3 No Breach. To Business Owner's knowledge, none of the undertakings contained in this Agreement violate any applicable governmental requirements, or conflicts with, or constitutes a breach or default under, any agreement by which the Business Owner is bound or regulated.

3.7.4 Warranty Against Payment of Consideration for Agreement. Business Owner warrants that it has not paid or given, and will not pay or give, to any third person, any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as accountants and attorneys.

3.8 Release of City Officials. No member, official, agent, employee, or attorney of the City shall be personally liable to Business Owner, or any successor in interest of the Business Owner, in the event of any default or breach by the City or for any amount which may become due to the Business Owner or its successors, or on any obligations under the terms of this Agreement. The Business Owner hereby waives and releases any claim it may have personally against the members, officials, agents, employees, consultants, or attorneys of the City with respect to any default or breach by the City or for any amount that may become due to the Business Owner or its successors, or on any obligations under the terms of this Agreement.

3.9 Reports. Within ten (10) days of filing each report with the California State Board of Equalization, Business Owner shall provide to the City true and correct copies of all reports filed by Business Owner with the California State Board of Equalization in order to allow the City to preliminarily determine the amount of Sales Tax paid by Business Owner on account of sales from the Site; provided, however, that the City shall not be deemed to have received any Sales Tax until the City actual receipt thereof.

3.10 Participation in Fuel Procurement Activities. Business Owner retains all right to participate in the City's petroleum product and fuel procurement activities.

4. OBLIGATIONS OF CITY OF HUNTINGTON BEACH

4.1 Financial Assistance Payments. As consideration for Business Owner's performance of its obligations set forth in this Agreement and subject to the terms and conditions of this Agreement, within thirty (30) days after the City confirms its receipt of Sales Tax paid by Business Owner attributable to sales from the Site for each quarter during the Operating Period (including any extended Operating Period), the City shall pay to Business Owner on a quarterly basis in arrears financial assistance in an amount equal to one of the following:

a. If the Sales Tax Increment generated by the Business Owner and actually received by the City for any given quarter is the Base Amount or lower, the amount of thirty percent (30%) of Sales Tax Increment generated by the Business Owner and actually received by the City for such quarter; or

b. If the Sales Tax Increment generated by the Business Owner and actually received by the City for any given quarter is higher than the Base Amount, the amount of sixty-five percent (65%) of Sales Tax Increment generated by the Business Owner and actually received by the City for such quarter.

At the end of the Operating Period (including any extended Operating Period) or earlier termination of this Agreement as expressly permitted herein, the City's obligations under this Section 4.1 shall automatically terminate without cost, expense, or liability to City. Financial assistance payments shall be payable from any source of funds legally available to City. In this regard, it is understood and agreed that the Sales Tax Increment from the Site is being used merely as a measure of the amount of financial assistance payments that are periodically owing by City to Business Owner, and that City does not pledge any portion of the Sales Tax Increment from the Site.

4.2 City's Obligation to Provide Conditional Assistance. The City's obligations to provide Business Owner with financial assistance pursuant to Section 4.1 are contingent on a quarter to quarter basis in each Fiscal Year and, for each quarter within the Operating Period (including any extended Operating Period), the City's obligations to make any payments to Business Owner under this Agreement are expressly contingent upon Business Owner, for the entirety of such quarter, completely fulfilling its obligations under this Agreement and producing Sales Tax Increment each quarter. In the event Business Owner does not produce Sales Tax Increment in any quarter, then the tax rebate obligations herein shall be zero dollars (\$0). If for any reason Business Owner fails to authorize the release or use of all or any part of sales tax information regarding its business in a manner satisfactory to the California State Board of Equalization or provide any information reasonably required by the City to perform the City's obligations under this Agreement, or if all or any part of the sales tax information of Business Owner is unavailable to the City or the City is not legally authorized to use such information for the purposes of performing its obligations under this Agreement, the financial assistance payment shall be based solely upon the information so received, if any.

4.3 Annual Adjustment. Promptly after each Fiscal Year of the City which includes a portion of the Operating Period (including any extended Operating Period), the City shall determine with respect to that Fiscal Year the aggregate amount of Sales Tax Increment received by the City and the aggregate amount of financial assistance payments made to Business Owner pursuant to Section 4.1. If for any reason (including, but not limited to, reporting errors or other adjustments) the aggregate amount of payments by the City with respect to that Fiscal Year is less than the aggregate amount payable with respect to that Fiscal Year, the City shall pay to Business Owner an adjustment payment equal to the amount of deficiency; if for any reason (including, but not limited to, reporting errors or other adjustments) the aggregate

amount of payments by the City with respect to that Fiscal Year is more than the aggregate amount payable with respect to that Fiscal Year, then the amount of the excess shall be applied against the next payments due under Section 4.1, except that if any unapplied excess remains after the Operating Period (including any extended Operating Period), Business Owner shall pay the amount of the unapplied excess to the City immediately upon written demand therefor.

4.4 California State Board of Equalization Determination of Improperly Allocated Local Sales Tax Increment. If, at any time during or after the Operating Period (including any extended Operating Period), the California State Board of Equalization determines that all or any portion of the Sales Tax Increment received by the City was improperly allocated and/or paid to the City, and if the California State Board of Equalization requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City any of the improperly allocated and/or paid Sales Tax Increment, then Business Owner shall, within ten (10) calendar days after written demand from the City, repay all financial assistance payments (or applicable portions thereof) theretofore paid to Business Owner which are attributable to such repaid, offset or recaptured Sales Tax Increment. If Business Owner fails to make such repayment within ten (10) calendar days after the City's written demand, then Business Owner shall be in breach of this Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Additionally, the City may deduct any amount required to be repaid by Business Owner under Section 4.1 from any future financial assistance payments otherwise payable to Business Owner under this Agreement. This Section shall survive the expiration or termination of this Agreement.

4.5 Legal Challenge. Should any third party successfully challenge the validity of this Agreement through a taxpayer suit or otherwise, either Party may terminate this Agreement upon thirty (30) days written notice.

4.6 Contingent Liability and Limitations. The financial assistance payment obligations of the City of Huntington Beach shall be subject to the provisions of City Charter Section 605, regarding annual budget appropriations, and shall not be payable for a period in excess of the Operating Period (including any extended Operating Period).

5. DEFAULTS AND REMEDIES

5.1 Business Owner Default. City shall provide Business Owner with written notice of Business Owner's failure ("Business Owner Default") to strictly abide by any material provision of this Agreement, including, without limitation, the obligations in Section 3 of this Agreement. Business Owner shall have fifteen (15) days from the date of such notice either to cure such Business Owner Default, or, if such Business Owner Default cannot be reasonably cured during such fifteen (15) day period, promptly (in any event, within 5 days after receipt of such notice) commences cure, and thereafter diligently (in any event within a reasonable time after receipt of such notice) prosecutes such cure to completion.

5.2 City Default. Business Owner shall provide City with written notice of City's failure ("City Default") to strictly abide by any material provision of this Agreement. City shall

have fifteen (15) days from the date of such notice either to cure such Business Owner Default, or, if such Business Owner Default cannot be reasonably cured during such fifteen (15) day period, promptly (in any event, within 5 days after receipt of such notice) commences cure, and thereafter diligently (in any event within a reasonable time after receipt of such notice) prosecutes such cure to completion.


5.3 General Remedies for Default. Except as provided in Section 5.4, upon either a City Default or a Business Owner Default uncured within the applicable cure period, Business Owner or City (as applicable) shall have the right to seek all available legal and equitable remedies, including, without implied limitation, general and consequential damages, unless otherwise expressly provided to the contrary herein. Unless prohibited by law or otherwise provided by a specific term of this Agreement, the rights and remedies of the City and the Business Owner under this Agreement are nonexclusive and all remedies hereunder may be exercised individually or cumulatively, and the City may simultaneously pursue inconsistent and/or alternative remedies. Notwithstanding the foregoing or anything to the contrary in this Agreement, in the event of a City Default, Business Owner shall only be permitted to pursue collection of the financial assistance payments on a quarter-to-quarter basis as such payments may become due hereunder. Business Owner hereby expressly waives any right Business Owner may have to seek, demand or collect, on an accelerated basis, any financial assistance payments that may be due after the date of any City Default.

5.4 Liquidated Damages.

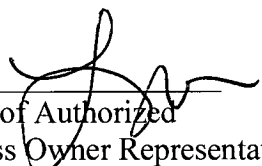
5.4.1 Business Owner Default With Respect to Obligations Under Sections 3.1, 3.2 and/or 3.3. The Parties acknowledge that the consideration to the City for its entry into this Agreement and the performance of its obligations hereunder include the City's receipt of Sales Tax Increment and other direct and indirect financial and non-financial benefits arising from the operation of the Business Owner's business at the Site. Business Owner agrees that the City will suffer damages if Business Owner commits any Business Owner Default with respect to any of its obligations arising under Sections 3.1, 3.2, and/or 3.3 that is uncured within the applicable cure period. The Parties agree that the exact determination of such damages would be impracticable and extremely difficult to quantify. Accordingly, the Parties have determined that Liquidated Damages represents a reasonable estimate of the damages which would be suffered by the City if Business Owner commits any Business Owner Default with respect to any of its obligations set forth in Sections 3.1, 3.2, and/or 3.3 that is uncured within the applicable cure period. Accordingly, as its sole and exclusive remedies for a Business Owner Default with respect to any of its covenants and obligations set forth in Sections 3.1, 3.2, and/or 3.3 that is uncured within the applicable cure period, the City shall be entitled to: (1) terminate this Agreement and the entirety of its obligations hereunder, including any accrued and unpaid financial assistance payments, and (2) receive from Business Owner the applicable amount of Liquidated Damages.

5.4.2 ACKNOWLEDGEMENT OF REASONABLENESS OF LIQUIDATED DAMAGES. UPON A BUSINESS OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1, 3.2, AND/OR 3.3, FOLLOWING NOTICE AND OPPORTUNITY TO CURE PURSUANT TO SECTION 5.1, THE CITY AND

BUSINESS OWNER ACKNOWLEDGE AND AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY WITH RESPECT TO SUCH DEFAULT. HAVING MADE REASONABLE, DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER AS FAIR COMPENSATION FOR THE LOSS SUSTAINED BY THE CITY IN THE EVENT OF SUCH A BREACH, THE PARTIES AGREE THAT THE LIQUIDATED DAMAGES AMOUNT REPRESENTS A REASONABLE ESTIMATION OF THOSE DAMAGES UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THIS AGREEMENT WAS MADE AND NOT A FORFEITURE OR PENALTY. THEREFORE, UPON A BUSINESS OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1, 3.2, AND/OR 3.3, AS ITS SOLE AND EXCLUSIVE REMEDIES FOR SUCH DEFAULT, THE CITY SHALL BE ENTITLED TO (1) RECEIPT OF THE LIQUIDATED DAMAGES, WHICH BUSINESS OWNER SHALL PAY WITHIN TEN (10) DAYS FOLLOWING WRITTEN DEMAND FROM THE CITY, AND (2) TERMINATE THIS AGREEMENT AND THE ENTIRETY OF ITS OBLIGATIONS HEREUNDER, INCLUDING ANY ACCRUED BUT YET UNPAID FINANCIAL ASSISTANCE PAYMENTS.



Initials of Authorized
City Representative



Initials of Authorized
Business Owner Representative

5.4.3. Exceptions. Damages defined in this section 5.4 shall not be applicable to or payable by Business Owner in any amount in the event Business Owner ceases operations of company, sells business or relocates business to location outside the State of CA..

6. EXISTING AGREEMENT

Except as set forth in the following sentence, this Agreement is intended to replace and supersede in its entirety the Existing Agreement and, upon the Effective Date, the Existing Agreement shall be terminated in its entirety, and City and Business Owner shall have no further rights or obligations under the Existing Agreement except as may be expressly provided therein. Notwithstanding the foregoing sentence or anything else contained in this Agreement to the contrary, City shall continue to be obligated under the Existing Agreement to pay Business Owner any financial assistance payments due and payable under the Existing Agreement as of the Effective Date of this Agreement and Section 4.3 of the Existing Agreement relating to the annual adjustment shall continue to be in full force and effect until the completion of the annual adjustment for the current Fiscal Year. It is the Parties intent that financial assistance payments under the Existing Agreement shall dovetail into financial assistance payments under this Agreement.

7. GENERAL PROVISIONS

7.1 Time of the Essence. Time is of the essence of this Agreement and each Party's obligations hereunder.

7.2 Venue. In the event of any litigation hereunder, all such actions shall be instituted in the Superior Court of Orange, State of California, or in an appropriate municipal court in the County of Orange, State of California or an appropriate Federal District Court in the Southern District of California.

7.3 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

7.4 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

7.5 Copies. Any executed copy of this Agreement shall be deemed an original for all purposes.

7.6 Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability, unless it affects the substantial rights of a party or defeats the purpose of this Agreement, shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision has not been contained herein.

7.7 Interpretation. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any Party. When the context of this Agreement requires, the neuter gender includes the masculine, the feminine, a partnership or corporation of joint venture or other entity, and the singular includes the plural.

The Parties acknowledge that this Agreement is the product of mutual arms-length negotiations and that each Party has been, or has had the opportunity to have been, represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of judicial construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Agreement. In any action or proceeding to interpret and/or enforce this Agreement, the trier of fact may refer to extrinsic evidence not in conflict with any specific provision of this Agreement to ascertain and give effect to the intent of the Parties hereto.

7.8 No Partnership or Joint Venture. The Parties hereto agree that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or association between City and Business Owner; or cause City or Business Owner to be responsible in any way for the debts or obligations of the other, and no other provision contained in this Agreement nor any acts the parties hereto shall be deemed to create any relationship

between City and Business Owner other than that of contracting parties. Further, nothing herein shall give or is intended to give any rights of any kind to any person not an express party hereto.

7.9 Integration. This Agreement is the entire Agreement between and final expression of the Parties, and there are no agreements or representations between the Parties except as expressed herein and the Existing Agreement as set forth in Section 6, above. All prior negotiations and agreements between City and Business Owner with respect to the subject matter hereof are superseded by this Agreement except as set forth in the Existing Agreement as set forth in Section 6, above. Except as otherwise provided herein, no subsequent change or addition to this Agreement shall be binding unless in writing and signed by the Parties hereto.

7.10 Nonwaiver. None of the provisions of this Agreement shall be considered waived by any Party except when such waiver is given in writing. The failure of any Party to insist in any one or more instances upon strict performance of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

7.11 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, permitted successors and assigns.

7.12 State of California Legislation Impact on Financial Assistance Payments. Business Owner acknowledges that the California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Sales Tax Increment which was otherwise payable to the City. Business Owner acknowledges that it is possible that the legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Sales Tax Increment and that such reduction will cause Business Owner a corresponding reduction and/or delay in the payment of the financial assistance payments due to Business Owner during such time as such legislation is in effect. Furthermore, Business Owner acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Operating Period (including any extended Operating Period) and may materially and negatively impact the amount of Sales Tax Increment and, accordingly, financial assistance payments. The City does not make any representation, warranty or commitment concerning the future actions of the California legislature with respect to the allocation of Sales Tax Increment to the City. Business Owner agrees that it is undertaking its obligations under this Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of such legislation.

The foregoing paragraph notwithstanding, City acknowledges that the California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Sales Tax Increment resulting from the enactment of legislation of the type described in the immediately preceding paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Agreement and the computation of any financial assistance payments which may become due to Business Owner hereunder, City will consider, on a quarter- quarter basis, any such offsetting revenues which are

(i) indexed to Sales Tax and offset the loss of Sales Tax Increment to the City on a dollar for dollar basis, (ii) actually received by the City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales tax revenues received by California municipalities, to be Sales Tax Increment within the meaning of this Agreement. Notwithstanding anything herein to the contrary, to the extent the City's receipt of Sales Tax Increment is impaired or restricted in any way or otherwise eliminated for any reason, the City shall not be obligated to make any financial assistance payments during the period within which the City's receipt of Sales Tax Increment is so restricted, impaired or eliminated.

7.13 Attorneys' Fees. In the event suit is brought by either Party to enforce the terms and provisions of this Agreement or to secure the performance hereof, each Party shall bear its own attorneys' fees.

7.14 Notices. All notices or other communications required or permitted between the City and Business Owner under this Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by telecopier, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express), addressed to the Party at the address provided below. Any notice so given by registered or certified United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by telecopier or courier service (e.g., Federal Express), shall be deemed given upon receipt of the same by the party to whom the notice is given. Any notice shall be addressed as set forth below:

If to City:

City of Huntington Beach
Attn: City Manager
2000 Main Street
Huntington Beach, CA 92648

If to Business Owner:

Pinnacle Petroleum, Inc.
Attn: Liz McKinley, President
7911 Professional Circle, Huntington
Beach, California 92648

With a copy to:

City Attorney
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

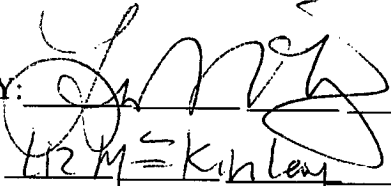
Either City or Business Owner may change its respective address by giving written notice to the others in accordance with the provisions of this Section.

(remainder of page left intentionally blank)

(signatures on following pages)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

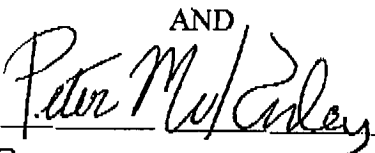
BUSINESS OWNER:
PINNACLE PETROLEUM, INC.

BY: 
Peter McKinley

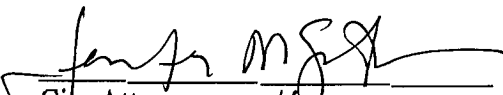
CITY OF HUNTINGTON BEACH,
A municipal corporation of the State of
California


Matthew M. Harper, Mayor

ITS: (CIRCLE ONE) Chairman/President Vice President

AND
BY: 
PETER MCKINLEY

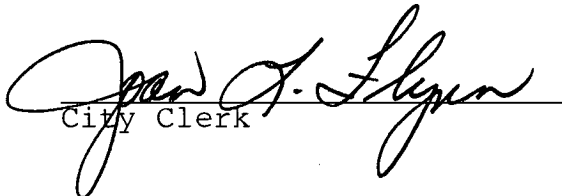
APPROVED AS TO FORM:


City Attorney 4.15.14

INITIATED AND APPROVED:

ITS: (CIRCLE ONE) Secretary/Chief Financial
Officer/Asst. Secretary - Treasurer


Assistant City Manager


City Clerk



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/16/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER FEDERATED MUTUAL INSURANCE COMPANY HOME OFFICE: P.O. BOX 328 OWATONNA, MN 55060	CONTACT NAME: CLIENT CONTACT CENTER	
	PHONE (A/C, No, Ext): 888-333-4949 FAX (A/C, No): 507-446-4664	
INSURED PINNACLE PETROLEUM INC 7911 PROFESSIONAL CIRCLE HUNTINGTON BEACH, CA 92648-1901	E-MAIL ADDRESS: CLIENTCONTACTCENTER@FEDINS.COM	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: FEDERATED MUTUAL INSURANCE COMPANY	13935
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES**CERTIFICATE NUMBER: 47****REVISION NUMBER: 1**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			9068974	06/14/2013	06/14/2014	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	Y	N				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	EXCLUDED
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY	\$1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
A	AUTOMOBILE LIABILITY			9068974	06/14/2013	06/14/2014	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input type="checkbox"/> ANY AUTO	N	N				BODILY INJURY (Per person)	
	<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident)	
	<input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR	N	N	9068829	06/14/2013	06/14/2014	EACH OCCURRENCE	\$4,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE	\$4,000,000
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION							
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y / N N / A					WC STATU-TORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	
							E.L. DISEASE - POLICY LIMIT	
APPROVED AS TO FORM JENNIFER McGRATH CITY ATTORNEY 4.22.14								

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CITY OF HUNTINGTON BEACH, ITS OFFICERS AND EMPLOYEES, ARE LISTED AS ADDITIONAL INSURED FOR GENERAL LIABILITY. COVERAGE IS NOT SUBJECT TO ANY SELF - INSURED RETENTION, OR ANY OTHER FORM OF SIMILAR - TYPE LIMITATION.

CERTIFICATE HOLDER310-059-1
CITY OF HUNTINGTON BEACH
2000 MAIN ST
HUNTINGTON BEACH, CA 92648-2702

47 1

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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P.O. BOX 8192, PLEASANTON, CA 94588

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 04-15-2014

GROUP:
POLICY NUMBER: 1490815-2013
CERTIFICATE ID: 169
CERTIFICATE EXPIRES: 10-01-2014
10-01-2013/10-01-2014
THIS CERTIFICATE SUPERSEDES AND CORRECTS
CERTIFICATE # 168 DATED 04-15-2014

CITY OF HUNTINGTON BEACH
2000 MAIN ST
HUNTINGTON BEACH CA 92648-2702

SG

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 10 days advance written notice to the employer.

We will also give you 10 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

A handwritten signature in black ink, appearing to read "Kent R. Va. Lauf".

Authorized Representative

A handwritten signature in black ink, appearing to read "Thomas E. Rone".

President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #1600 - LIZ MCKINLEY P, S, T - EXCLUDED.

ENDORSEMENT #2570 ENTITLED WAIVER OF SUBROGATION EFFECTIVE 2014-04-15 IS
ATTACHED TO AND FORMS A PART OF THIS POLICY. THIRD PARTY NAME:
CITY OF HUNTINGTON BEACH

EMPLOYER

PINNACLE PETROLEUM INC
7911 PROFESSIONAL CIR
HUNTINGTON BEACH CA 92648

SG

[TMJ,CS]



P.O. BOX 8192, PLEASANTON, CA 94588

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE**ISSUE DATE: 04-15-2014****GROUP:****POLICY NUMBER: 1490815-2013****CERTIFICATE ID: 169****CERTIFICATE EXPIRES: 10-01-2014****10-01-2013/10-01-2014****THIS CERTIFICATE SUPERSEDES AND CORRECTS****CERTIFICATE # 168 DATED 04-15-2014****CITY OF HUNTINGTON BEACH
2000 MAIN ST
HUNTINGTON BEACH CA 92648-2702****SG**

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 10 days advance written notice to the employer.

We will also give you 10 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

A handwritten signature in black ink, appearing to read "Kurt R. LaF...".

Authorized Representative

A handwritten signature in black ink, appearing to read "Thomas E. Rone...".

President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.**ENDORSEMENT #1600 - LIZ MCKINLEY P, S, T - EXCLUDED.****ENDORSEMENT #2570 ENTITLED WAIVER OF SUBROGATION EFFECTIVE 2014-04-15 IS
ATTACHED TO AND FORMS A PART OF THIS POLICY. THIRD PARTY NAME:
CITY OF HUNTINGTON BEACH**

EMPLOYER

**PINNACLE PETROLEUM INC
7911 PROFESSIONAL CIR
HUNTINGTON BEACH CA 92648****SG**

[TMJ,CS]

WAIVER OF SUBROGATION NOTICE

Enclosed is your copy of a certificate of insurance on which the certificate holder required a waiver of subrogation:

1. Please be advised that a waiver of subrogation requires that a 3% surcharge will be applied by State Fund ONLY to the premium assessed on the payroll of your employees earned while engaged in work for that certificate holder who requested the waiver. (Note: if you have no employee payroll on that job, then there is no charge.)
2. To apply the 3% surcharge, you must also agree to maintain accurately segregated payroll records for employees engaged in work on job/s for the certificate holder who has the waiver. The payroll records are subject to verification by an auditor.

Example:

Payroll for job:	\$5,000.00
Sample Rate:	13.30%

Regular Premium equals:	\$ 665.00
Surcharge:	3.00%

Additional Waiver charge:	\$ 19.95
Total premium equals	\$ 684.95 (665.00 + 19.95)

ATTACHMENT #2



PINNACLE PETROLEUM, INC.
AB 562 – ECONOMIC DEVELOPMENT STRATEGY
JOB RETENTION

THE CITY OF HUNTINGTON BEACH



April 14, 2014

Ms. Kellee Fritzel
Deputy Director Business Development
CITY OF HUNTINGTON BEACH
2000 Main Street
Huntington Beach, CA 92648

RE: Pinnacle Petroleum, Inc.
AB 562 - Economic Development Strategy
Job Retention

Dear Ms. Fritzel:

The City of Huntington Beach (City) has commissioned Tierra West Advisors, Inc. (Tierra West) to review, analyze and prepare a report pertaining to a Operating Covenant Agreement (Agreement), between the City and Pinnacle Petroleum, Inc. (Pinnacle) based upon the economic development strategy and to comply with the newly enacted public reporting requirements of Assembly Bill 562 (AB 562).

The State Legislature and Governor Brown, due to the elimination of Redevelopment addressed the loud outcry by cities, counties and communities for the need to legislatively assist local agencies, as well as the State, to encourage employment, retain jobs and companies in local communities. The loss of redevelopment has left the City of Huntington Beach with a loss of local resources to encourage economic development. In response to this loss, the City of Huntington Beach is developing an economic development strategy and is also considering an economic development subsidy that will comply with the continued public reporting provisions mandated by AB 562.

Pinnacle, located in Huntington Beach, is proposing to maintain its headquarters within the City for the next 15 years. In order to remain competitive and promote expansion, Pinnacle and the City are proposing to enter into the Agreement and revenue sharing arrangement as part of the City's Economic Development Program. The Agreement is intended to provide Pinnacle and the City the ability to address among others:

- Decline in competitiveness due to industry consolidation
- Update existing Tax Sharing Agreement terms
- Extend Pinnacle's operations in the City
- Retain City General Fund revenues to provide needed services for residents
- Retain and capture future growth in Pinnacle product sales (leveraging on estimated future revenue and industry price increases)

2616 East 3rd Street
Los Angeles California 90033
T 323/265 4400
F 323/261 8676
W tierrawestadvisors.com

REAL ESTATE & DEVELOPMENT
STRATEGISTS

- Increase the economic competitiveness of Huntington Beach
- Increase the City's wealth and prosperity
- Diversify the City's economic base and wage levels
- Outreach and support to existing businesses
- Maintain and enhancing a consistent, business-friendly environment
- Expand public-private partnership opportunities

Tierra West recognizes that the provisions of the Operating Covenant Agreement and retention of Pinnacle would not only assist Pinnacle but also provide a strong public purpose through the City's continued expansion of economic development opportunities for businesses within the City and continued growth of the City's General Fund revenue and tax base, as well as improve economic and physical conditions and services in the City.

Sincerely,
TIERRA WEST ADVISORS, INC.



John N. Yonai

**City of Huntington Beach
Economic Development (AB562)
Operating Covenant Agreement
between
City of Huntington Beach
and
Pinnacle Petroleum, Inc.**

The City of Huntington Beach (City) in order to maintain sustainable economic development, community vitality and recovery from the annual loss of over \$21 million previously received by the City's Redevelopment Agency, is implementing economic development strategies that include the application of Assembly Bill (AB) 562. The City and Pinnacle Petroleum, Inc. (Pinnacle) propose to enter into an Operating Covenant Agreement (Agreement). The Agreement requires Pinnacle to remain in operation in the City and the City will continue to provide revenue sharing with Pinnacle.

The loss of redevelopment has left the City of Huntington Beach as well as all cities Statewide with a loss of local resources to encourage economic development and maintain local services. The California Legislature and Governor Brown made the decision to terminate redevelopment and removed the single largest economic tool available to local agencies. Based upon the decision to terminate redevelopment Statewide, the Governor and Legislature recognized the necessity of cities, counties and the State, to encourage employment and retain jobs and companies by giving economic subsidies to businesses and the importance of providing public input by requiring:

1. A public hearing prior to the granting of the subsidy
2. A report regarding the subsidy within the term
3. Where a subsidy has a term of more than 10 years, an additional public hearing at the conclusion of the subsidy.

The State approved AB 562, which went into effect on January 1, 2014, codifying a continued public reporting requirement for economic development subsidies.

This report includes the information required by AB 562 and the fiscal analysis necessary to determine the projected revenue generated by Pinnacle to the City as part of the economic development strategy for business retention through an Operating Covenant Agreement. The City-provided information which was utilized to establish an estimated "Revenue Tax Base" of sales tax collected by the City from Pinnacle. After the Revenue Tax Base was determined, projections of additional revenue generation from sales tax collections directly attributable to the business were developed. The projected revenue tax increases from Pinnacle represents new resources as well as the retention of a portion of existing general fund revenues to the City of which a percentage of the revenue collected will be shared with Pinnacle. This will avoid significant fiscal Impacts to City revenues and community services.



The economic development strategies seek demonstration that the proposed business retention will result in community-wide benefits, which is evidenced by the retention of revenues that will be used to provide municipal services. The City Council may choose to approve the Agreement in order to retain and expand jobs, maintain a local business, assist Pinnacle to gain competitiveness within the fuel provision industry and incentivize the business owner to consider and complete upgrades and improvements. This report identifies the financial data necessary to allow the City Council to determine the value of entering into the proposed Agreement.

AB 562 Reporting Requirements

On and after January 1, 2014, each local agency shall, before approving any economic development subsidy within its jurisdiction, provide all of the following information in written form available to the public, and through its Internet Web site, if applicable:

1. The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.

Pinnacle Petroleum, Inc., 7911 Professional Circle, Huntington Beach, CA 92648

Founded in 1995, Pinnacle Petroleum, Inc. (Pinnacle) is a national provider of competitively priced energy products and services. Pinnacle services include the distribution of refined petroleum products and lubricants, environmental services, cardlock fueling, and remote tank monitoring with a fully integrated fuel management system. Pinnacle is a 100% woman owned California Corporation. Certifications include WBENC #240301 with WMBE Clearinghouse #95IS0030.

Refined Petroleum Industry

The refined petroleum products market in the US grew 22 percent between 2006-2012 despite a sharp decline in consumption and price during the economic downturn. The local refined petroleum products industry followed similar trends, growing by an average of 6 percent per year during the 2006-2012 review period. The US refined petroleum products industry became more export oriented with the share of exports increasing from 6 percent in 2006 to 16 percent in 2012. Strong growth is forecast for the industry as high prices and recovering volume demand will propel revenues.

2. The start and end dates and schedule, if applicable, for the economic development subsidy.

Operating Covenant Agreement, if approved is anticipated to commence on July 1, 2014 and continue for ten (10) years with one (1) five (5) year option term by mutual agreement.

Sales Tax Generation

The Bradley Burns Uniform Local Sales and Use Tax ("Bradley Burns") applies to the sales of tangible personal property in which a percentage of California's sales and use tax rate is distributed back to the jurisdiction where sales were generated to support local general funds. For many jurisdictions, including the City, this amount is one percent (1%). Sales tax is payable to the City from the State Board of Equalization. The calculations in this report indicate only the estimated amount of sales tax to be received

by the City through the distribution formula used by the State Board of Equalization. Pinnacle proposes to maintain and enhance existing business operations in the City. The City and Pinnacle mutually agreed that a Sales Tax Base would be set at \$25,000 per quarter to offset and minimize any potential decline in current general fund revenue. Therefore, the City would receive the first \$25,000 each quarter and revenue sharing would commence on any sales tax generated by Pinnacle above this amount.

Sales projections were developed based upon review of retail sales data between the years of 2008 through 2013. According to the historical sales data, Pinnacle generated on average approximately \$243,000 in revenue per quarter or approximately \$972,000 annually. 2012 and 2013 data indicated steady growth in revenue with an average of \$254,000 in sales per quarter or \$1.016 million per year.

The City and Pinnacle are presently under contract with a Sales Tax Agreement entered in July 2007 and includes the following terms: The City provides Pinnacle with 30 % of the sales tax revenue generated by Pinnacle and received by the City with the remaining balance of 70% retained by the City. The duration of the current agreement is for 10 years commencing in July of 2007 and slated for termination in June 2017, unless the parties enter into the new Agreement. To date, the City has received approximately \$4.0 million in sales tax revenue as a result of Pinnacle's operation and revenue generated.

3. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

Economic Development Strategy Implementation and Business Retention

In furtherance of the City's economic development strategies, a revenue sharing Agreement in the form of the Operational Covenant Agreement is being proposed. Pursuant to AB562 the revenue sharing Agreement is defined as an Economic Development Subsidy that is an expenditure of public funds or loss of revenue to a local agency in the amount of one hundred thousand dollars (\$100,000) or more, for the purpose of stimulating economic development within the jurisdiction of a local agency, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zone or empowerment zone incentives, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits. Economic Development Subsidy shall not include expenditures of public funds by, or loss of revenue to, the local agency for the purpose of providing housing affordable to persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. The City and Pinnacle are currently in a revenue sharing agreement which the parties propose to amend and extend. The current agreement began in July of 2007 and is set to expire with the proposed new Agreement. To date, the City has received approximately \$4.0 million in sales tax revenue as a result of Pinnacle's operations.

The City is being reactive in retaining Pinnacle as one of the major contributors to the City's general fund. The City economic development strategies recognize the vulnerable economic recovery the Nation and City are experiencing. The potential relocation of Pinnacle and total loss of revenue would be much more detrimental and undermine the



City's delicate economic recovery and cause significant impact to services. The City is making a significant commitment to maintain the economic momentum it has gained over the past 12 months.

The City and Pinnacle propose to enter into a new Agreement that would extend the commitment by Pinnacle to remain in the City for up to fifteen (15) additional years. The Agreement provides for a sales tax sharing structure that would provide Pinnacle with up to 65 percent of the sales tax revenue generated by Pinnacle and the City 35 percent. It is estimated that the Agreement will provide Pinnacle with approximately \$7.4 million and the City \$5 million over a ten (10) year period. Should the parties agree to extend the Agreement for the five (5) year option term, Pinnacle will receive a cumulative amount in revenue sharing of approximately \$12.0 million and the City \$8 million over fifteen (15) years of the extended Operating Period.

4. A statement of the public purposes for the economic development subsidy.

Public Purpose

Review of the Agreement and proposed revenue sharing between Pinnacle and the City is consistent with the City's economic goals and strategies and is in the best interest of the general public.

Economic goals and strategies include the following:

- Increase the economic competitiveness of Huntington Beach
- Increase the City's wealth and prosperity
- Maximize public revenues and economic development financing options
- Diversify the City's economic base and wage levels
- Outreach and support to existing businesses
- Maintain and enhancing a consistent, business-friendly environment
- Expand public-private partnership opportunities
- Maintain current and provide future City public Services, capital projects and maintenance

The loss of redevelopment has had significant fiscal impact on City revenues and eliminated the primary local economic tool. Retaining Pinnacle's business operations in the City would address the need and desire to maintain revenue streams such as property and sales tax to the City. Additionally, Pinnacle's continued presence in the City would assist in maintaining relative balance in the local economy through indirect retail sales and employment from other local businesses that are supported by Pinnacle's location in the City. Retention of Pinnacle will also result in maintaining occupied property square footage thus minimizing the risk of blight and dilapidation.

The operating covenant and revenue sharing Agreement assists Pinnacle in the following areas:

- Decline in competitiveness due to industry consolidation
- Update current Tax Sharing Agreement Terms to allow Pinnacle to remain competitive
- Early capture of future growth in product sales (leveraging on estimated future revenue or industry price increases)

Pinnacle has identified multiple instances where larger competitors, created by significant consolidation of operators in the industry, have prevailed over Pinnacle by providing prices at significantly lower than Pinnacle's product costs. In recent months there have been a number of smaller operations that have been purchased by larger companies. These acquisitions have made it difficult for many of the remaining smaller operations to submit competitive price quotes for new business contracts. Larger companies are positioned to offer lower bid prices, thus creating a challenging environment for operations similar to Pinnacle to remain viable.

Pinnacle and the City concur that the current Tax Sharing Agreement between the City and Pinnacle is not reflective of the current industry standards or requirements for competitiveness. Tierra West has reviewed comparable agreements between companies and communities and noted substantial support for revenue sharing agreements of 65 percent. Pinnacle, as well as, overall industry forecasts project significant growth in sales revenue over the next five (5) and ten (10) years. City staff and Pinnacle agree that early capture or the ability of Pinnacle to accelerate increases in revenue through the proposed Agreement will allow it to be more competitive with contract pricing and operations.

5. Projected tax revenue to the local agency as a result of the economic development subsidy.

Based on the current City and Pinnacle Sales Tax Sharing Agreement, the City has received approximately \$4.0 million in sales tax revenue as a result of Pinnacle's operations in Huntington Beach. Based upon the proposed Operating Covenant Agreement, it is estimated that the City will receive an additional \$5 million during the first ten (10) years of the new Agreement. Should the parties agree to extend the Agreement for the additional five (5) year term; the City will receive \$8 million over fifteen (15) years of the extended Operating Period.

6. Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

Pinnacle Petroleum, Inc. was founded in Huntington Beach in 1995 and moved to Seal Beach in 1998 and remained there for 10 years. Seal Beach provided a revenue sharing agreement to entice Pinnacle to move from Huntington Beach to Seal Beach. Pinnacle and Huntington Beach entered into a Sales Tax Agreement in July 2007 and Pinnacle agreed to relocate its headquarters back to Huntington Beach along with its 10 full time employees. Pinnacle has increased its employee base in the City by 300% and now has 30 full time employees. Based upon projected Pinnacle sales growth, over the term of the Agreement it is estimated that Pinnacle will increase employment in the City by approximately 8% per year. Over the initial 10 year term Pinnacle is anticipated to increase from 30 to 62 employees. Assuming Pinnacle and the City extend the Operating

Covenant Agreement for the five (5) year option; Pinnacle's employee base could potentially reach 91 at year 15.

Summary

Pinnacle Petroleum, Inc. (Pinnacle) and the City have agreed that Pinnacle remaining in Huntington Beach is beneficial for both parties. The City has proposed that Pinnacle agree to an Operating Covenant Agreement (Agreement) to remain in Huntington Beach for the next fifteen (15) years. Pinnacle and the City have mutually agreed to a revenue sharing structure in exchange for the Operating Covenant that also provides Pinnacle a more competitive advantage in an industry that is consolidating. The revenue sharing Agreement is the economic development subsidy that is consistent with the City's economic development implementation strategy and as prescribed in AB 562. Assistance is provided in the form of a revenue sharing agreement between Pinnacle and the City. The Agreement provides for Pinnacle receiving 65% of the sales tax revenue generated by Pinnacle's operation with the balance of 35% going to the City. The proposed Agreement will be for ten (10) years and could be extended for an additional five (5) year operating period upon the same terms and conditions for a total of a fifteen (15) year Operating Covenant. The estimated amount of the total subsidy or expenditure of public funds would be \$7.4 million over a ten (10) year period. Should Pinnacle and the City extend the Agreement for the five (5) year term, Pinnacle could receive a cumulative amount in revenue sharing of approximately \$12.0 million through year fifteen (15) of the extended Operating Covenant period.

Based upon review of the Agreement, the structure is consistent with the City's economic goals and implementation strategy is in the best interest of the general public. The Agreement and projections indicate the City will receive approximately \$5.0 million in sales tax revenue during the first of ten (10) years of the Agreement; including the five (5) year extension under the Agreement, the City will receive approximately \$8 million in total through the extended Operating Covenant period.

The Agreement serves a valid public purpose through the expansion of economic development opportunities for businesses in the City, continuing to expand the City's employment base, and continuing to generate sales tax revenue that the City utilizes to fund general governmental services for businesses and residents.

Recommendation

Retention of Pinnacle in the City will continue to contribute to the economic vitality of the City, continue to provide additional jobs within the City, continue to expand the City's tax base and improve economic and physical conditions in the City. Loss or relocation of Pinnacle out of the City will impact a vulnerable economic recovery and momentum that the City is achieving and reduce City services. As such it is recommended that the Operating Covenant Agreement be approved.

By its approval of the Agreement, the City Council of the City of Huntington Beach finds and determines that the Agreement serves as a valid public purpose through continuing to expand economic opportunities for businesses in the City, continuing to expand the City's employment base, and continuing to generate Sales Tax that the City will utilize to fund general governmental services such as police, fire, street maintenance, and parks and recreation programs.

NOTICE OF PUBLIC HEARING

EMAIL - 4/7/14
SUB - 4/10/14

Pursuant to Section 53083(a)(6)(b) of the California Government Code (AB 562), the City of Huntington Beach shall provide public notice and a hearing prior to granting of proposed economic development subsidy.

NOTICE IS HEREBY GIVEN that the City of Huntington Beach will hold a public hearing in the Council Chambers of the Huntington Beach Civic Center, 2000 Main Street on Monday April 21, 2014 at 6:00 p.m., unless otherwise changed by the City Manager, to consider the following item:

Applicant: Pinnacle Petroleum, Inc.: Liz McKinley, President
Project Location: 7911 Professional Circle, Huntington Beach, California 92648

Agreement:

The City of Huntington Beach desires to create and retain jobs and employment within the City. The City has the ability to implement the provisions of AB 562, a Statewide economic development tool passed by Governor Brown in late 2013 for the purpose of allowing local jurisdictions to induce economic development for the creation and maintenance of jobs. The City of Huntington Beach and Pinnacle Petroleum, Inc. are proposing to enter into an agreement that encourages Pinnacle Petroleum, Inc. to retain its headquarters and business within Huntington Beach. The City is proposing to provide financial assistance in the form of an economic development subsidy to Pinnacle Petroleum as described in the Operating Covenant Agreement. Pursuant to Section 53083 of the California Government Code (AB 562) the following information will be posted on the City's Web Site.

1) The name and address of all corporations, or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.

PINNACLE PETROLEUM, INC., a California corporation, 7911 Professional Circle, Huntington Beach, CA 92648

2) The start and end dates and schedule, if applicable, for the economic development subsidy.
Commencing approximately July 1, 2014.

3) A description of the economic development subsidy, including the estimated total amount of expenditure of public funds, or of revenue lost to, the local agency, as a result of the economic development subsidy.

The proposed Operating Covenant Agreement provides for participation of revenues generated from Pinnacle Petroleum's operations within the City with the City of Huntington Beach. The Agreement provides that Pinnacle will retain 65% of revenues generated by Pinnacle to the City over \$25,000; payment will be made on a quarterly basis. It is estimated, based on current sales, that Pinnacle will generate approximately \$1.02 million per year to the City in revenue. Based upon this estimate, Pinnacle is projected to receive approximately \$660,000 per annum and the City approximately \$356,000 per annum.

4) A statement of the public purposes for the economic development subsidy.

To continue to expand and enhance economic opportunities for businesses in the City, continue to expand the City's employment base, and continue to generate hereinafter defined Sales Tax that the City can utilize to fund general governmental services such as police, fire, street maintenance, and parks and recreation programs.

5) Projected tax revenue to the local agency as a result of the economic development subsidy.

The City of Huntington Beach will receive approximately \$356,000 per year in sales tax revenue.

6) Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time and temporary positions.

The City and Pinnacle have estimated that the Agreement preserves 27 full time jobs in the City and over the term of the Agreement, Pinnacle will generate an additional 20 to 25 full time jobs in the City.

All interested persons are invited to attend this hearing and express opinions upon the items listed above. The Operating Covenant Agreement is available for review at Huntington Beach City Hall from April 10, 2014 through April 21, 2014.

Any written materials to be submitted to the City Clerk at least twenty-four (24) hours prior to the hearing City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648.

Further information on these items may be obtained at the City of Huntington Beach, Attn: Kellee Fritzal, Deputy Director Business Development, 2000 Main Street, Huntington Beach, CA 92648 or by telephone: (714) 374-1519.

PUBLISHED:

POSTED AT CITY HALL AND ON CITY WEB SITE:

Huntington Beach Independent April 17, 2014

April 7, 2014



Los Angeles Times

CLASSIFIED ADVERTISING PROOF

Printed by: 0596 Vacant
Salesperson:
Phone:

Apr 7, 2014, 3:50 pm

Ad # 35788191



Los Angeles Times

Account Information

Phone #: (714) 536-5511
Name: City of Huntington Beach
Address: c/o Patricia Esparza
2000 Main St
Huntington Beach, CA 92648
Acct #: CU00310791
Client:
Placed by: Patty Esparza
Fax #:

Ad Information

Start date: 04-10-14
Stop date: 04-10-14
Insertions: 1
Rate code: &Legal Huntington Beach
Taken by: 6716 Brittany Jackson
Size: 2 x 102.430
Billed size: 10.00 TCN Inch
Keyword:
Ad type: Liner
Gross price: \$ 160.00
Net price: \$ 160.00
Amt Due: \$ 160.00

Note: Amount Due is subject to change due to discounts, miscellaneous fees, or other charges.

Ad Copy:

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RECEIVED
**PROOF OF
PUBLICATION**
2014 APR 15 PM 12:22
CITY CLERK
CITY OF
HUNTINGTON BEACH

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I am a citizen of the United States and a resident of the County of Los Angeles; I am over the age of eighteen years, and not a party to or interested in the notice published. I am a principal clerk of the HUNTINGTON BEACH INDEPENDENT, which was adjudged a newspaper of general circulation on September 29, 1961, case A6214, and June 11, 1963, case A24831, for the City of Huntington Beach, County of Orange, and the State of California. Attached to this Affidavit is a true and complete copy as was printed and published on the following date(s):

Thursday; April 10, 2014

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on April 10th, 2014
at Los Angeles, California


Signature

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City of Huntington Beach

2000 Main Street ♦ Huntington Beach, CA 92648
(714) 536-5227 ♦ www.huntingtonbeachca.gov

Office of the City Clerk

Joan L. Flynn, City Clerk

April 29, 2014

Pinnacle Petroleum, Inc.
ATTN: Liz McKinley, President
7911 Professional Circle
Huntington Beach, CA 92648

Dear Ms. McKinley:

Enclosed for your records is a copy of "Operating Covenant Agreement Between The City of Huntington Beach and Pinnacle Petroleum, Inc.."

Sincerely,

Joan L. Flynn, CMC
City Clerk

JF:pe

Enclosure